IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 37154 of 2007(W)

CC.721/2005 of J.M.F.C.,PERUMBAVOOR
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PETITIONER:

ABDUL KHADER, AGED 70 YEARS,
S/O.LATE SRI.KOCHUNNI,
PALAKKA VEETTIL, VENGOLA VILLAGE,
KUNNATHUNADU.

BY ADV. SRI.M.A.ABDUL HAKHIM

RESPONDENTS:
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1. ABDUL SALAM.T.A.,
S/O.ABUBACKER, THANDIKKAD HOUSE,
KOOTTAYI, THIRUR, MALAPPURAM DISTT.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.No.37154 of 2007

Dated this the 17th day of December 2007

J U D G M E N T

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. He is aged about seventy years, it is submitted. The complaint was filed and cognizance was taken by the learned Magistrate as early as in 2005 as can be seen from the number assigned to the case C.C.No.721/2005. The petitioner wants his case to be taken up emergently and out of turn. The learned Magistrate has in the routine course posted the case along with other similar cases to 07/11/2008. The short prayer of the petitioner is that his case may be taken up out of turn immediately considering his old age. The petitioner has a further grievance that the amount is returnable in connection with the marriage of his daughter to the accused. No maintenance has even been paid by the accused to the daughter of the complainant. The petitioner is hard pressed for money. In these circumstances, he prays that a direction may be issued for expeditious disposal of the case initiated by the petitioner.

2. The plight of the petitioner, no doubt, deserves sympathy. I agree with the learned counsel for the petitioner that the case must be disposed of as expeditiously as possible. But has the petitioner approached the learned Magistrate with the request for

out of turn expeditious disposal? Admittedly, he has not. Without and before resorting to that course, the petitioner has rushed to this court with this writ petition. I am satisfied that the petitioner must have moved the learned Magistrate first for an out of turn expeditious disposal of the case.

3. I am satisfied, in these circumstances that this petition can be dismissed with a specific observation that the petitioner can move the learned Magistrate and thereupon the learned Magistrate must consider the petitioner's request for out of turn expeditious disposal and take appropriate action and pass appropriate orders. If the petitioner is aggrieved by the orders passed, certainly the petitioner can come to this court. At present, I find it unnecessary to entertain this writ petition from the petitioner who has not moved the court concerned for an expeditious disposal.

4. With the above observation, this writ petition is dismissed.

5. Hand over copy of this order to the learned counsel for the petitioner who can produce the same along with the application for advancement of hearing to be filed by him.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007